

**BOROUGH OF WESTWOOD
ZONING BOARD OF ADJUSTMENT
REGULAR PUBLIC MEETING
MINUTES
June 2, 2008**

1. OPENING OF THE MEETING

The meeting was called to order at approximately 8:00 p.m.

Open Public Meetings Law Statement:

This meeting, which conforms with the Open Public Meetings Law, Chapter 231, Public Laws of 1975, is a Regular Meeting of the Westwood Zoning Board.

Notices have been filed with our local official newspapers and posted on the municipal bulletin board.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL:

PRESENT: Raymond Arroyo
Dan Koch
Joseph Frasco, Vice-Chairman
William Vietheer
Guy Hartman
Eric Oakes
Christopher Owens (Alt #1)
Michael Bieri (Alt. #2)

ALSO PRESENT: David Rutherford, Esq., Board Attorney
Louis Raimondi, Maser Consulting, PA
Board Engineer
Steve Lydon, Burgis Associates
Borough Planner

ABSENT: William Martin, Chairman (excused absence)

Vice-Chairman Joseph Frasco chaired the meeting.

4. MINUTES - Minutes of 4/7/08 & 5/5/08 carried to the next meeting;

5. CORRESPONDENCE: As listed on Agenda and read:

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1. Letters dated May 21, 2008 from Maser Consulting RE: Puentes, Uniq Surfaces, Falcone applications;

2. Letters dated May 13, 2008 from Alampi & DeMarrais RE: Paragon Federal Credit Union;

3. Letter dated May 12, 2008 from Beattie Padovano RE: Paragon Federal Credit Union;

4. Memoranda dated May 14 & May 22, 2008 from Burgis RE: Uniq Surfaces and Petrina, respectively;

5. Letter dated May 23, 2008 from Price Meese RE: Pinto;

6. Letter dated 5/14/08 from Mr. & Mrs. Bermudez;

6. **VOUCHERS:** A motion to approve vouchers totaling \$4,681.25 was made by Mr. Vietheer and seconded by Mr. Koch and carried unanimously on roll call vote.

7. **RESOLUTIONS:**

1. **Lynch, 117 Beech Street - Interpretation/Appeal** - Mr. Rutherford gave an overview of the Resolution of Denial of applicant's appeal, upholding the decision of the Zoning Officer. A motion for approval of Resolution was made by Mr. Arroyo and seconded by Mr. Koch. There were no further questions, comments or discussions. On roll call vote, all members voted yes. Mr. Hartman was not eligible to vote.

2. **George & Virginia Boenigk, 123 Lafayette Avenue** - A motion for approval of Resolution Dismissing the Application Without Prejudice for Lack of Prosecution with applicant to be responsible for all professional fees was made by Mr. Vietheer and seconded by Mr. Arroyo. There were no further questions, comments or discussions. On roll call vote, all members voted yes. Mr. Hartman was not eligible to vote.

3. **Pathan, 33 High Street - Land Use and Development** - A motion for approval of Resolution Dismissing the Application without Prejudice for Lack of Prosecution with applicant to be responsible for all professional fees was made by Mr. Vietheer and seconded by Mr. Koch. There were no further questions,

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comments or discussions. On roll call vote, all members voted yes. Mr. Hartman was not eligible to vote.

8. PENDING NEW BUSINESS:

1. William Vietheer, 36 Newark Avenue - Install Gazebo

10. VARIANCES, SUBDIVISIONS AND/OR SITE PLANS, APPEALS, INTERPRETATIONS:

SWEARING IN OF BOARD PROFESSIONALS FOR PUBLIC HEARINGS

The Board Professionals were sworn in

1. Park/Brian/GV Investment and Consulting - Proposed Subway - Carried to 8/4/08 - Applicant to renotece;

2. Paragon Federal Credit Union, Washington Avenue, Block 805, Lots 2 & 3 - Scheduled for a Special Meeting on 6/9/08;

3. JP Morgan Chase - Preliminary and final Site Plan and Variance Application - Was set for 6/12/08, but carried at request of applicant; Carried to 7/7/08 - Applicant's attorney to renotece and republish;

4. Phil Petrina, 118 3rd Avenue - Proposed Sunroom addition - Carried to 7/7/08 at request of the applicant without having to notice;

The Board took a recess from 8:50 to 9:00 p.m.

5. Dennehy, 40 Lester Avenue - Section 68 Appeal - Addition/Front Porch - Addition carried to 7/7/08 - Hearing on Appeal - Walter K. Schreyer represented the applicant an application for a Section 68 Certificate for two-family home and addition. The publication documents were submitted.

John Dennehy, owner/applicant, and Chris Blake, Architect were sworn in. Michael Avella, 36 Lester Avenue, was also sworn in. Mr. Schreyer indicated Mr. Dennehy purchased the property in 2001 from the Estate of Paraskevi Anestakis, Deceased. A disabled tenant lives in an independent living space at the premises form and since 2001 on a month-to-month basis. He did not have witness Donna Sanoudis, Executrix, present, but had a letter from her, as she was in Aberdeen. Mr. Schreyer indicated they contend this is a pre-existing, non-conforming use. The

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letter was read into the record by Mr. Schreyer, stating the property was the same on the date of closing as it was in 1963. He further referred to the documentation provided by the Tax Assessor's Office, with a Landlord and Tenant Registration form dated 9/30/05 for a two-family residence with inspection compliance report. The owner does not seek to expand the pre-existing, non-conforming use. Michael Avella, father-in-law of Mr. Dennehy, testified he owns the property at 36 Lester Avenue. Further, he knew the Anestakis Family. The property always had a tenant from when it was owned by the Anestakis Family to the present.

Questions by Board Members followed. The utilities were not separate, and they had no prior leases. Mr. Dennehy was sworn in and testified the present tenant has always lived there from the time he purchased the property. Photographs were submitted, described and marked into evidence. Mr. Owens questioned the assessment whether he claimed it as a two-family on his income taxes, and applicant responded yes. There are two entrances, apartments, and kitchens.

The matter was opened to the public, but there were no questions or comments. Discussion by the Board ensued. The Board was to consider the request for a Section 68 Certificate. Mr. Arroyo addressed the tax records and commented it was very inconsistent and confusing. Mr. Frasco stated it was the consensus that we need photographs and other documentation and testimony from previous owner, or the Board could make a decision based on the evidence before it tonight. Mr. Dennehy explained the difficulty in getting the prior owner in to testify. Mr. Rutherford suggested there may be some other neighbors available to testify. Mr. Frasco commented the Board does not have enough evidence to make a decision and perhaps they could bring additional documentation to assist the Board in making a decision. Mr. Schreyer agreed they could provide more evidence. The matter was carried to 7/7/08.

6. Uniq Surfaces, 701 Broadway, Block 701, Lot 7 - Variance - Carried to 7/7/08. Applicant to renote and republish.

7. F&A Woodland Associates, 309 Kinderkamack Road - Use Variance - Carried to 7/7/08 at request of applicant's attorney, Brian Giblin, Esq.;

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8. Bermudez, 32 Grove Street - Replacement of Porch -
Carried to 8/4/08;

9. Philip & Eve Pinto, 51 Roosevelt Avenue, Block 1510, Lot 11 - Dean Stamos, Esq. was requested to come forward with respect to a variance for a setback for a detached garage. The setback approved was not in line and the garage foundation was constructed parallel to the line so there is a 4' setback the entire length of the garage. He contacted Mr. Rutherford and requested to publish and notice for tonight, which he did. He asked if the Board would want to go ahead and hear this. The engineer and Planner did not review, but Mr. Stamos contends it is a relatively straight forward issue. Mr. Stamos spoke and gave a brief synopsis. They were before the Board in December 2007. The client was looking for a detached garage on an existing foundation. The approval was set forth in the Resolution. The structure was demolished as it was in poor condition. The Contractor saw the plans and variance, placed the foundation and commenced construction on the structure at a setback at 4' 3" across the span of the garage, as opposed to 4' at the front and 5' at the back, as noted in the Resolution of approval. It is a difference of 9" greater, but really like 6". He contacted Mr. Rutherford's office, and an amendment is necessary. They published for an amendment and asked for the Board's consideration to grant the request. Mr. Arroyo commented it is up to the Board and subject to completeness. Mr. Raimondi asked if the footing was poured. Mr. Pinto said the footings were dug. They had the as-built survey. The footprint would remain the same, it was just off the line. The Board was polled and agreed to hear it that evening. Mr. Raimondi would review the survey.

The Survey prepared by Christopher Lantelme dated 5/13/08 was distributed and reviewed. Mr. Stamos explained as stated above, and Mr. Pinto was sworn in and testified as to same. Mr. Pinto described the facts. They destroyed the old garage, dug the footing and they discussed the 4' setback. They never read the Resolution, and noticed the garage was crooked, and they straightened it out and made it parallel. Mr. Stamos advised technically it was a rear yard variance. Mr. Rutherford requested the original Resolution. Mr. Raimondi stated the building is on an angle. The shortest point is 4.3'. The resolution would have to allow that. Mr. Stamos said as it goes across the front it goes back, thereby pushing the rear back.

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Mr. Rutherford checked the publication of the notice and found it to be sufficient, and it covered the rear yard. Mr. Lydon reviewed the matter and felt it was the only variance. Mr. Raimondi commented it was a de minimus variance. Mr. Stamos stated in closing that it was an honest mistake and appreciated the Board taking the time to hear them this evening. Any fees or escrow would be paid.

There were no questions or comments from the public. A motion for approval based on the advice of the Board Professionals that the change is de minimus, was made by Mr. Owens and seconded by Mr. Oakes. On roll call vote, all members voted yes.

10. Puentes, 60 Wheeler Avenue, Block 205, Lot 1 - Vincent Cioffi, Architect appeared with Mr. Puentes, the applicant. The application was incomplete for lack of basement plans and outstanding engineering items as set forth in Mr. Raimondi's report of 5/21/08. Mr. Cioffi stated applicant wants to request a waiver for a topographical survey. Mr. Frasco polled the Board. Mr. Raimondi suggested proposed elevations. A motion to grant a waiver for submission of a topographical survey, but conditioned on applicant providing spot elevations was made by Mr. Oakes and seconded by Mr. Koch. On roll call vote, Mr. Koch, Mr. Arroyo, Mr. Oakes, Mr. Viethier, and Mr. Owens vote dyes. Mr. Hartman voted no. The application was carried to 7/7/08 with a new notice and publication, to include a request for a Section 68 Certificate.

11. Conrad, 25 Park Avenue, Block 912, Lot 2 - Appeal of Zoning Officer's Decision - Lauren E. Allu, Esq. represented the applicant. They were seeking an appeal of the denial of their C/C/O and Notice of Violation and Order to Correct. Alfred & Sandra Conrad and their daughter were sworn in. Ms. Allu stated approvals were received in 2006 for a Section 68 Certificate to continue as a three-family house. They are selling their home and now the number of parking spaces has been called into question. There is a large gravel area in the rear of the house that is large enough to accommodate six vehicles. This permits two cars per apartment. To the best of their knowledge the gravel driveway has been in existence prior to the 1960's when it was purchased by the Conrads. They have not expanded the gravel area in any way and have only maintained its existence by filling in worn down areas with additional gravel. The

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ordinances in 2004 did not count gravel as impervious coverage. Mr. & Mrs. Conrad purchased the property in 1966 as a three-family home. They contend this is a pre-existing non-conformity and should be permitted to remain. She submitted a copy of the Deed, marked Exhibit D1. The Board of Adjustment Resolution was marked D2. Since 1966 they continued with a rear gravel driveway, and with parking six cars in the driveway. Ms. Submitted a series of photographs marked D3 and identified. Ms. Allu also distributed a copy of the Ordinances dated 1994 and 2003, marked D4. In 2003 the Ordinance language was changed to include gravel as impervious coverage. Also submitted was Land Development Chapter 65C, dated 11/25/82. Ms. Allu was trying to show that the condition predated the ordinance and that prior to 2003 gravel was considered to be just like grass.

Questions by Board Members followed. Mr. Oakes asked what coverage would be allowed. A discussion ensued. Applicant volunteered to add landscaping. The matter was opened to the public, but there were no questions or comments.

A motion to overturn the Zoning Officer's Decision was made by Mr. Owens and seconded by Mr. Koch. There were no further questions comments or discussions. On roll call vote, all members voted yes.

12. Falcone, 11 Fifth Avenue, Block 914, Lot 2 - Addition
- Carried to 7/7/08 with notice and publication;

11. DISCUSSIONS: Annual Report & Procedural Rules - Procedural Rules changes were made by Mr. Rutherford, and the Annual Report was good. Mr. Rutherford outlined the latest change. The Board could adopt them tonight or carry. Both were carried to the next meeting.

A special Meeting was scheduled for 6/9/08. Mr. Hartman stated he would not be present as he would be traveling.

12. ADJOURNMENT - On motions, made seconded and carried, the meeting was adjourned at approx. 10:15 p.m.

Respectfully submitted,

MARY R. VERDUCCI, Paralegal
Planning Board Secretary